

*I have included the whole of this Statute, for though I presume **170** that the first part down to sec. 4 is all that was intended to be incorporated in our laws, I apprehend that the latter part is still the law, except as to the punishment of the gaoler using duress.

The right of the sheriff to the custody of the public jail and his liabilities consequent thereon were fully affirmed by the Court of Appeals in *Slemaker v. Marriott*, 5 G. & J. 406,¹ and see the Code, Art. 88, secs. 60-63,² but in Baltimore City a warden of the jail is appointed by the visitors,³ see also *Mitton's case*, 4 Rep. 32 b. By Art. 50, sec. 18⁴ of the Code, the grand jury is directed at each term of the Court to visit the jail, and inquire into its condition, the manner in which it is kept, and the treatment of the prisoners, and report the same to the Court. In *Bethell's case*, 1 Salk. 348, the defendant was fined 100*l.* by a Court of *oyer and terminer*, and committed until payment to the custody of the keeper of Newgate. The Court said that the commitment ought to be to the sheriff, who is the legal and immediate officer to every Court of *oyer and terminer*, yet a gaoler is a known officer of the law, and his custody is the custody of the sheriff to many purposes, and they refused to discharge the prisoner on *habeas corpus*, but left him to his writ of error. In *R. v. Fowler*, 1 Salk. 350, a writ of *habeas corpus* to the sheriff or gaoler, in the disjunctive, was quashed. If a man is taken on a warrant to the sheriff in pursuance of a writ to the sheriff, the *habeas corpus* ought to be directed to the sheriff, for the party is in his custody and the writ itself must be returned. Otherwise it is where one is committed to the gaoler immediately, as in cases criminal. See Code, Art. 43,⁵ tit. HABEAS CORPUS.

¹ *Cocking v. Wade*, 87 Md. 529, 539. But while at common law the sheriff is entitled to the custody of the jail and the care of prisoners therein, nevertheless he is a mere ministerial officer and an act of the legislature taking from the sheriff the control of a county jail and vesting the same in a properly appointed Board of Visitors would be constitutional. *Beasley v. Ridout*, 94 Md. 641.

² Code 1911, Art. 87, secs. 44-46.

³ Balto. City Code, sec. 126. *Beasley v. Ridout*, 94 Md. 641; *Field v. Malster*, 88 Md. 691.

⁴ Code 1911, Art. 51, sec. 22.

⁵ Code 1911, Art. 42.